

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS
SUBCOMMITTEE ON SB 134**

Call to Order: By **SEN. JOHN ESP**, on January 28, 2003 at 5:00
P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Edward Butcher (R)
Sen. Jeff Mangan (D)
Sen. Dan McGee, Vice-Chairman (R)
Sen. Linda Nelson (D)
Sen. Jerry O'Neil (R)
Sen. Joseph (Joe) Tropila (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Lynn Zanto, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 134, 12/30/2002
Executive Action:

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Discussion:

Karla Gray, Chief Justice, Montana Supreme Court, said they have a budget that is \$18 million more than the Governor's Budget and most of it is attributed to state assumption. A bill by **SEN. WALTER MCNUTT** would put the responsibility of this deficit back to the counties and there is substantial opposition from the counties. There is also a repealer bill introduced by **SEN. DUANE**

GRIMES. She felt that these were not viable options. To try and go back and collect data from counties previous to 2001 to get more accurate numbers on expenditures would take time and money. She felt new data would essentially be the same as what was originally submitted for state assumption. She passed out a substitute bill **EXHIBIT(fcs18a01)** and explained with this proposal they would have to watch every single dollar, but it is only about \$2.4 million over the executive budget. This is a significant decrease from the current proposed judicial budget. The positive aspect of the proposal is it gets everyone's mind out of the past. This would not do monumental harm to the court, state or county budgets. It would allow them to come to the 2005 session with 2 1/2 years of hard data. She stated that the proposal funds personal services, benefits, and operating costs of the courts. In subsection (4) they tried to aggregate the variable costs that were included in state assumption. She said the variable costs would be \$17.5 million per year. They are proposing that if this is not enough money for variable costs, then the state and county will share in those costs. She also discussed the language on page 15 that amends section 57 of SB 176. She said this language relates to the several hundred county employees who came over to the state with their accumulated sick and leave time. She felt the financial responsibility for the accumulated sick and vacation time belongs to the counties and after that the state would be responsible. The employees that became state employees as of July 1, 2002 came over with accumulated sick and vacation time of about \$1 million. 25 percent of those employees are already retirement eligible. She used the example of one employee who came over on July 1 with over 3000 hours of sick and vacation time. In this example, that would be 75 weeks of sick and vacation time. She cannot leave juvenile probation spots or other jobs open for 75 weeks.

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Lisa Smith, Administrative Services Director, Supreme Court, handed out **EXHIBIT(fcs18a02)** and explained it. The fall back for all variable costs would be the responsibility of the counties and this would simplify the accounting system. Currently, some costs are reimbursed at 100 percent while others are at 65 percent and it is an accounting nightmare. This proposal puts all of it at the same reimbursement level with the fall back on the counties when the funds run out. She stated item number 2 would restrict \$7.5 million for variable costs. If the fixed cost fund runs short, they would pull funding from the variable cost fund to cover these fixed costs. By putting a restriction on the \$7.5 million, it can only be used for variable costs and will be available for the counties. She discussed item number 3 pertaining to the 65 percent reimbursement. In 2002 they did not

have enough to fully pay the 80 percent. They paid 80 percent of the claims through May and then had to prorate June for that year; they could not pay the 20 percent. Most of this money was used because of the Bar-Jonah case; indigent defense costs were over \$1 million. They decided that the payout rate should be at 65 percent because of this happening. Any excess that remains of the \$7.5 million at the end of the year will go to the counties. She stated with this proposal they have to be exact because they have gone from \$17.2 million, down to \$2.4 million over the executive budget. If the legislature decides to implement branch wide vacancy savings, they have to be exact. They cannot apply vacancy saving on elected officials such as judges, justices, secretaries, law clerks, etc. because they are direct service providers. With this proposal they will have 2 1/2 years of solid data to make reliable funding decisions in 2005. They have set up the accounting system so that they know exactly where those costs are coming from by each district etc. The fixed appropriations are between personal services and general operating costs. The general operating costs are the current appropriation, which is \$1 million times 1.03 for inflation. The variable appropriation for fiscal 2003 is \$7.51 million. They are six months behind on some of their payments to the counties. It was Christmas before they mailed out the final 2002 payment for the district court reimbursement. In this proposal they would hire one more accounting technician. The \$2.4 million they are asking for is not in the executive budget, but they need it in order to fund this program properly.

{Tape: 1; Side: B; Counter: 3.3}

CHAIRMAN JOHN ESP asked when they funded at 100 percent and had money left over, how they reimbursed back to the counties.

Ms. Smith said the counties had to apply for the excess that was available. It was based on a complex formula of mill levies assessed, costs incurred etc. and the entire fund was always completely used and reimbursed.

SEN. MIKE WHEAT asked if the public defender costs were in the variable costs.

Ms. Smith advised yes.

SEN. JEFF MANGAN said in the previous budget, fixed costs for the biennium were \$3.9 million and in this budget are \$2.5 million. He asked if money was moved to the variable costs to make this change.

Ms. Smith said they tracked these expenses on their old district court reimbursement system and the categories were really broad, etc. The problem is with federal grants that go out at the end of the year. The **Department of Revenue** included these figures in their calculations; however, she did not want to put grants in this proposal as these grants go for all types of district court expenses. She took the figure for the grants and reallocated it among the other categories on a percentage basis. This is why there is a difference between the two numbers. Budgets are projections and they must come up with a number on the type of data that they have.

{Tape: 1; Side: B; Counter: 8.2}

SEN. WHEAT said in Gallatin County the two district judges are operating a pilot program, which is operating on a federal grant. He asked if those kinds of programs funded by grants are not a budget item.

Ms. Smith said that is correct.

SEN. DAN MCGEE asked if the \$7,551,194.00 is for the 2003 budget cycle.

Ms. Smith said no, SB 176 directed them exactly how to allocate the funding. The **Department of Revenue** would tell them what they had and how to split it between fixed and variable costs. They had to go back to the 1999 actual expenditures of the counties and figure out by county and district what their fixed and variable costs were and determine the percentages state wide for 1999. They could apply that percentage to the total appropriation and that would tell them what they had available for fixed expenses. Then they had to go to individual counties and districts and their percentage was applied to the portion of the appropriation available for fixed expenses. The variable appropriation was the balance.

SEN. MCGEE asked how much money has actually been spent of the \$7,551,194.00 out of the variable account.

Ms. Smith said \$361,000 has been spent, but most of the bills have not been paid yet.

SEN. MCGEE asked how much are the bills.

Ms. Smith said they do not know because they do not have the staff to get it done.

SEN. MCGEE asked if they left the Executive budget in place and they only received \$6.4 million per year for variable costs, got the accounting in place, and the more accurate data, wouldn't this be a more viable solution. He didn't feel comfortable spending the taxpayer's money on something that is not actual.

Ms. Smith said the \$7.5 million is for 2003 and that is based on the work that revenue did and what the counties reported. She said if their initial projections are so inflated and if everybody else is right and the counties reported correctly then the \$7.5 million should be right on.

{Tape: 1; Side: B; Counter: 15.2}

Chuck Swysgood, Office of Budget and Program Planning, said the difference between the judiciary proposal and the executive budget is in the general operating and variable costs and is about \$1.8 million. The personal service amount remains the same. He stated that the other items are under the un-funded branch requests that are not included in the executive budget. He said he would like to be able to go back and look at the old fiscal note on SB 176 and those assumptions that were made when the bill was passed and see exactly where some of those changes are. The bottom line is they are still \$2.4 million over the executive budget and they need to address this difference.

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Chief Justice Gray advised the budget they submitted was based on the state assuming and being totally responsible for all of the costs. The existing fall back to the counties terminates on June 30, 2003.

SEN. WHEAT asked if the \$15 million would fall back on the counties.

Chief Justice Gray said neither they nor the counties feel that it will be that much.

SEN. MANGAN asked if the counties would be reimbursed at 65 percent.

Chief Justice Gray replied yes, unless there was the need to decrease it at a later date.

SEN. MANGAN asked if there was any extra money left, would it go back to the counties.

Chief Justice Gray said that was correct.

SEN. MANGAN asked if this had to be in the bill.

Chief Justice Gray indicated it was not there as a clear statement, but if it needs to be then they will have it added.

Gordon Morris, MT Assoc. of Counties, said the counties are in favor of this proposal with minor adjustments. He referred to the temporary section, Title 3, Part 5, Chapter 901 and said this section was temporary until July 2002 when SB 176 went into effect. The old language that needs to be added is: if money appropriated for the expenses listed in subsection (1) exceeds the amount necessary to fully fund those expenses then the remaining amount must be used for district court grants. This language would be appropriate to add on page 6, item 5. Section (9) of the bill should be amended on page 8. There is concern that if they are being reimbursed 65 percent on the dollar until they get to the point at the end of the year to determine if they can pay 100 percent they have to front load the money and look for an exemption. If the money is subjected to 15-10-420 then it is voted on and they need to be able to get to that money to pay the bills. He stated the county levy for certain court expenses is subject to 15-10-420. They would like this removed so that they have taxing flexibility. On page 15, the transition provision, the state does not have the ability of vacancy savings. If they have an accrual, what they assume is contingent liability for that accrual is going to be 20 percent of the total accrual value. They would pay the equivalent 80 percent by vacancy savings and that opportunity is available in most counties. There was talk of why couldn't they buy down the accruals. They would also like to know what type of accrual method is being used; the one prior to July 2002 or the one after that time. They would like to use first in, first out so that they are taking vacation and sick on their portion of the accruals, but also continuing accrual on the state portion. The \$7.5 million is somewhat of an artificial number, he contended. In the old days that pot consisted of that portion of the motor vehicle money that was set aside for reimbursing counties. Under the old law, 10 percent of the motor vehicle registration fees went into this program and right up to 2002 they were running in the area of \$6.5 million by way of the reimbursement program. This program refunded 100 percent until 2002 when they had the *Bar-Jonah* case and a multiple homicide case. It was decided that there was not enough money to make it in 2003, so the reimbursement was set at 65 percent so that everyone would get some reimbursement.

{Tape: 2; Side: A; Counter: 3.8}

SEN. MANGAN asked how the local vehicle option fee works and the priority for district courts.

Mr. Morris indicated the local option fee authority gave priority for district court funding. In SB 176, the preference was taken out for funding district court and now it is up to the counties on where they want to use that money.

SEN. MANGAN asked if that money did not come to the state.

Mr. Morris said that was correct, it did not come to the state and was not a factor in determining expenses that were identified.

SEN. MANGAN asked if it was permissive or did every county implement this.

Mr. Morris advised from the inception of the law they have seen a growing number of counties utilizing it. There are about 53 counties who impose the local option, which is up to one half of one percent or a flat fee in the new law.

SEN. MANGAN asked if this proposal or similar proposals went through and some of those costs fall back to local governments, would that fee be available to fund some of this.

Mr. Morris said yes, as well as other available revenues.

SEN. MANGAN asked if it would be a reasonable suggestion for the counties to use the local option fee to help pay for the state public defender program.

Mr. Morris said no, he did not feel they would be willing to give up that money for district court purposes.

{Tape: 2; Side: A; Counter: 8.2}

Lynn Zanto, Legislative Services, passed out information.

EXHIBIT(fcs18a03) EXHIBIT(fcs18a04) EXHIBIT(fcs18a05) She explained a spreadsheet on variable costs, district court operations, judge's costs, FTEs, etc. These included the cost of the old program and state assumption.

SEN. MCGEE asked what OP stood for on line 14.

Ms. Zanto said it stands for operating cost. She said the new proposal is for \$7.5 million and anything above that would fall

upon the counties. She also explained the fixed and operating costs for district court assumption of \$19.5 million per year.

SEN. MCGEE asked if there was a 6.92 percent increase per year.

Ms. Zanto said no, that is comparing 2001 and it is about 2 percent per year. She explained court assumption versus the executive budget with the old proposal of the \$17 million difference.

SEN. MCGEE said in 2001 the variable costs to reimburse were \$6 million and asked if those are real dollars.

Ms. Zanto affirmed those are real.

SEN. MCGEE asked what is the 24.78 percent increase on line 8.

Ms. Zanto replied that is from 2001 to 2004. She explained how the old district court criminal reimbursement program was funded.

CHAIRMAN ESP said one thing that has changed between the old number and the new estimate is the voter initiative to lower the light vehicle tax.

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SEN. MCGEE said when they look at fiscal year 1996 to 1997 there was a 14 percent increase in the total variable costs. In 1998-1999 there was a 6.7 percent increase, in 1999-2000 it was -4.1 percent and in 2000-2001 it was 9 percent. From 2001 to the proposed 2004, it increases 24.78 percent and that seemed a rather large increase.

Ms. Smith said it includes the 2002 and 2003 numbers, but it also includes estimates. They do not want to low-ball it because costs are going up.

ADJOURNMENT

Adjournment: 6:30 P.M.

SEN. JOHN ESP, Chairman

PRUDENCE GILDROY, Secretary

JE/PG

EXHIBIT (fcs18aad)